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Wyndham Vacation Ownership, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT GARIBAY, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

WYNDHAM VACATION OWNERSHIP  
INC.; and DOES I through 50, inclusive,

Defendants.

Case No.

**NOTICE TO FEDERAL COURT OF  
REMOVAL OF CIVIL ACTION FROM  
STATE COURT**

Pursuant to 28 U.S.C. § 1332(a), Defendant Wyndham Vacation Ownership, Inc. (incorrectly identified as “Wyndham Vacation Ownership Inc.”) (“Defendant”) hereby notifies the Court of the removal of *ROBERT GARIBAY, on behalf of himself and all others similarly situated*, v. *WYNDHAM VACATION OWNERSHIP INC.; and DOES I through 50, inclusive*, Case No. A-21-829354-C, which was filed in the Eighth Judicial District Court in Clark County, Nevada. In support of said removal, Defendant states as follows:

1. On February 11, 2021, an action was commenced in the Eighth Judicial District Court of Clark County, Nevada, entitled *ROBERT GARIBAY, on behalf of himself and all others similarly situated*, v. *WYNDHAM VACATION OWNERSHIP INC.; and DOES I through 50, inclusive*. A copy of the Complaint is attached hereto as **Exhibit 1**.

1           2.       On February 25, 2021, Defendant was served with a copy of the Complaint and a  
2 Summons issued by the State Court on or about February 19, 2021. A copy of the Summons is  
3 attached hereto as **Exhibit 2**.

4           3.       No further proceedings have been had in this matter in the State Court.

5           4.       This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it has been  
6 filed within thirty (30) days of February 25, 2021, the first date on which Defendant received any  
7 pleadings setting forth the claims for relief upon which the civil action is based.

8           5.       This action is a civil action of which this Court has original jurisdiction pursuant to  
9 28 U.S.C. § 1332, diversity jurisdiction.

10          6.       Plaintiff is a citizen of the State of Nevada. **Exhibit 1, ¶ 4**.

11          7.       For the purpose of determining diversity of citizenship, a corporation is a citizen  
12 both of its state of incorporation and the state “where it has its principal place of business.” 28  
13 U.S.C. § 1332(c)(1). A corporation’s “principal place of business” is defined as “the place where  
14 the corporation’s high level officers direct, control, and coordinate the corporation’s activities.”  
15 *3123 SMB LLC v. Horn*, 880 F.3d 461, 463 (9th Cir. 2018) (citing *Hertz Corp. v. Friend*, 559  
16 U.S. 77, 80 (2010)).

17          8.       Wyndham Vacation Ownership, Inc. is incorporated in Delaware and its principal  
18 place of business is in Orlando, Florida. **Exhibit 3**.

19          9.       As such, there is now and there was at the time of the commencement of this  
20 action, complete diversity between Plaintiff and Defendant.

21          10.       Plaintiff’s Complaint alleges two (2) causes of action for failure to pay wages for  
22 rest periods in violation of Nevada law, and for waiting time penalties under Nevada law.  
23 Plaintiff is seeking damages in the form of payment of minimum wages, waiting time penalties,  
24 attorney’s fees and costs (which are expressly permitted by Nev. Const. Art. 15, Sec. 16(A), and  
25 Nev. Rev. Stat. § 608.140), and punitive damages pursuant to N.R.S. 42.005 to punish Defendant.  
26 Plaintiff has filed his Complaint as a class action under Nevada law, seeking relief on behalf of  
27 himself and all others similarly situated. Plaintiff alleges damages in excess of \$15,000. **Exhibit**  
28 **1, ¶ 1**. Further, Nev. Rev. Stat. § 608.140, the basis on which Plaintiff seeks attorney’s fees,

1 provides that an award of attorney's fees is mandatory should Plaintiff prevail, which mandates  
 2 inclusion of such fees in determining the amount in controversy. *See Fritsch v. Swift Transp. Co.*  
 3 *of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) ("a court must include future attorneys' fees  
 4 recoverable by statute or contract when assessing whether the amount-in-controversy requirement  
 5 is met.") Based on an analysis of the allegations in the Complaint, and the likely attorney's fees  
 6 Plaintiff will incur to litigate this matter, Plaintiff's potential attorney's fees award is likely in  
 7 excess of \$75,000.00, independent of his general, special, and punitive damages.

8 11. Therefore, this Court has original jurisdiction over the subject matter of this action  
 9 under the provisions of 28 U.S.C § 1332(a) in that there is complete diversity between the parties  
 10 and more than \$75,000 in controversy exclusive of interest and costs. Pursuant to 28 U.S.C §  
 11 1441, Defendant is therefore entitled to remove this action to this Court.

12 12. A true and correct copy of this Notice of Removal is being filed this date with the  
 13 Clerk of the Eighth Judicial District Court of the State of Nevada.

14 WHEREFORE, Defendant prays that the above-referenced action now pending in the  
 15 Eighth Judicial District Court of the State of Nevada in and for the County of Clark be removed  
 16 therefrom to this Court.

17 Dated this 17<sup>th</sup> day of March, 2021.

18 JACKSON LEWIS P.C.

19  
 20 /s/ Daniel I. Aquino  
 21 Kirsten A. Milton, Bar #14401  
 22 Daniel I. Aquino, Bar #12682  
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23 *Attorneys for Defendant*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 17<sup>th</sup> day of March, 2021, I caused to be served via this Court's electronic filing system, a true and correct copy of the above foregoing **NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE COURT** properly addressed to the following:

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